

Please cancel claims 2, 4, 8, 9, 11, 12 and 13 without prejudice.

### REMARKS

Reconsideration and withdrawal of the Examiner's rejections under 35 USC §103 and §112 is requested in view of the foregoing amendments and the following remarks. Claim 5, twice amended, and claim 6 remain in the case.

#### 35 U.S.C. 112

Process claims 2, 4, 12 and 13 have been cancelled without prejudice accordingly the rejection is now moot and withdrawal is requested.

#### 35 U.S.C. 103(a)

The Examiner has rejected claim 5 under 35 U.S.C. 103(a) as being unpatentable over either Clemmings et al. or Warren et al., each in view of WO 92/22581, applicants' admission, and the Griffith et al. article "Antifreeze Proteins and Their Use in Frozen Foods".

The present invention relates to the provision of frozen food products comprising the specific AFP Type III HPLC 12. The product provided contains ice crystals which have an aspect ratio of greater than 1.9.

The incorporation of AFPs into frozen food products, such as ice confections, was known before the priority date of the invention. The references cited by the Examiner are examples of such products.

However, applicants' attorney has been informed that all known products containing ice crystals have an aspect ratio of less than 1.9. The present invention provides the first teaching that it is possible to achieve frozen products comprising AFPs, and specifically the AFP Type III HPLC 12, containing ice crystals having an aspect ratio of greater than 1.9.

The ability to provide ice crystals having such a high aspect ratio within a frozen food product containing AFP was totally unexpected.

As mentioned by the Examiner, it was already known that antifreeze peptides are able to influence the shape of the ice crystal. Nevertheless, there is no indication that the shape of the ice crystal can be influenced, to such an extent, that an aspect ratio of greater than 1.9 is achieved for the ice crystals present in the frozen product. The applicant has already provided evidence that shows that although AFPs other than AFP Type III HPLC 12 are indeed able to influence the shape of the ice crystal, the aspect ratio achieved is less than 1.9.

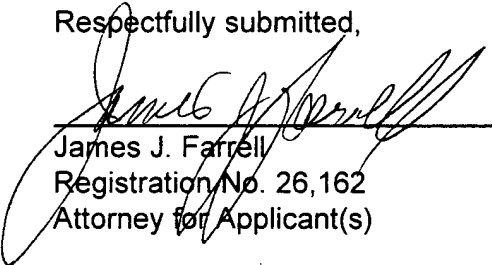
Accordingly, the invention meets the requirements of 35 U.S.C. 103(a).

35 U.S.C. 102

The Examiner has cited the document WO 97/02343. It is believed that this document was only published on January 23, 1997, after the priority date of the present application (July 26, 1996) and is therefore not prior art to the present application.

In light of the foregoing amendment and remarks, early favorable action is solicited.

Respectfully submitted,



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